

15. 2 421
No. 10940

United States
Circuit Court of Appeals
For the Ninth Circuit.

KOA GORA,

Appellant,

vs.

TERRITORY OF HAWAII,

Appellee.


Transcript of Record

UPON APPEAL FROM THE SUPREME COURT OF
THE TERRITORY OF HAWAII

FILED

FEB 15 1945

PAUL P. O'BRIEN,
CLERK



Digitized by the Internet Archive
in 2010 with funding from
Public.Resource.Org and Law.Gov

No. 10940

United States
Circuit Court of Appeals
For the Ninth Circuit.

KOA GORA,

Appellant,

vs.

TERRITORY OF HAWAII,

Appellee.

Transcript of Record

UPON APPEAL FROM THE SUPREME COURT OF
THE TERRITORY OF HAWAII

INDEX

[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

	Page
Appeal:	
Notice and Certificate of (DC)	
No. 16921	52
No. 16922	49
Notice of	2
Order Extending Time to File Record on..	7
Assignment of Errors	3
Attorneys of Record	1
Clerk's Certificate	54
Clerk's Statement of Docket Entries.....	6
Judgment on Writ of Error	39
Minutes of Court—C16921:	
July 30, 1943—Arraignment and Plea....	40
Aug. 10, 1943—Trial—Jury Waived	41
Minutes of Court—No. C16922:	
Aug. 10, 1943—Trial—Jury Waived	45
Minutes of Court—Nos. C16921 and C16922:	
Aug. 11, 1943—Minute Order Staying Mit-	
timus	44, 48
Aug. 18, 1943—Minute Order Staying Mit-	
timus	44, 49

Index	Page
Notice and Certificate of Appeal (DC) :	
No. C16921	52
No. C16922	49
Notice of Appeal	2
Order Approving Statement of Evidence.....	29
Order Extending Time to File Record on Appeal	7
Opinion	30
Praecipe	8
Statement of Evidence	9
Exhibit "A"—Pint Bottle of Whisky 4/5 Full	12
Order Approving	29
Stipulation re Approval of	29
Witnesses for Defendant:	
Gora, Koa	
—direct	19
—cross	23
—recalled, direct	26
Phillips, Ellen	
—direct	24
—cross	24
—redirect	25

Index**Page**

Witnesses for Prosecution:

Mottl, Joseph R.

—direct 18

Notikai, Arthur A.

—direct 9

—cross 13

—recalled, rebuttal direct 25

—recalled, direct 27

Shaner, Frank

—direct 15

—cross 17

—recalled, direct 26

Stipulation re Approval of Statement of Evi-
dence 29

ATTORNEYS OF RECORD

E. J. BOTTS

Stangenwald Building

Honolulu, T. H.,

and

F. PATTERSON

McCandless Building

Honolulu, T. H.,

Attorneys for plaintiff in error.

W. Z. FAIRBANKS,

Public Prosecutor, and

J. E. PARKS,

Assistant Public Prosecutor,

Honolulu Hale

Honolulu, T. H.

Attorneys for defendant in error. [1*]

*Page numbering appearing at foot of page of original certified Transcript of Record.

In the Supreme Court of the Territory
of Hawaii

TERRITORY OF HAWAII,

Defendant in Error,

vs.

KOA GORA,

Plaintiff in Error.

NOTICE OF APPEAL

1. Name and address of plaintiff in error: Koa Gora, 1712 Kamamalu Avenue, Honolulu, T. H.

2. Name and address of attorneys for plaintiff in error: Fred Patterson, McCandless Building, and E. J. Botts, Stangenwald Building, Honolulu, T. H.

3. Offense: Violation of Section 6253, Revised Laws of Hawaii, 1935, as amended by Act 88, Session Laws of 1941, Lewd and Lascivious Conduct.

4. Date of Judgment: Supreme Court of Hawaii judgment October 24, 1944.

5. Brief description of judgment or sentence: Tried, jury waived, before Judge, Circuit Court, First Circuit, adjudged guilty August 10, 1943, and sentenced to imprisonment for six months in jail.

6. Plaintiff in error is released on bail.

7. Grounds for appeal: Plaintiff in error claims that the charge against him was insufficient to satisfy the requirements of the Sixth Amendment of the Constitution and was so vague, uncertain and indefinite as not to inform him of the nature of the charge and [4] accusation against him or to enable him to prepare his defense.

I, the above-named plaintiff in error, hereby appeal to the United States Circuit Court of Appeals for the Ninth Circuit from the judgment above mentioned on the grounds set forth herein.

KOA GORA,

Plaintiff in Error.

Dated: October 25, 1944.

[Endorsed]: Filed Oct. 27, 1944. [5]

United States Circuit Court of Appeals
For the Ninth Circuit

TERRITORY OF HAWAII,

Defendant in Error,

vs.

KOA GORA,

Plaintiff in Error.

ASSIGNMENT OF ERRORS

Comes now Koa Gora, plaintiff in error in the above entitled matter, and files the following assignment of errors upon which he will rely in the prosecution of his appeal from the decision of the Supreme Court of the Territory of Hawaii.

I.

Defendant was charged with violation of Section 6253 of the Revised Laws of Hawaii, 1935, as amended by Act 88, Session Laws of 1941, which makes a criminal offense of "lewd conversa-

tion, lascivious conduct or libidinous solicitations” without defining or otherwise specifying what acts or words constitute an offense. The charge against defendant in the trial court was merely that he had, on a day specified, done “that which was lewd and lascivious in conduct.” Plaintiff in error contends that said charge was insufficient to reasonably apprise him of the nature of the charge or accusation against him, and the same was too vague, indefinite, uncertain and general to satisfy the requirements of the Constitution, particularly the Sixth [7] Amendment thereof;

II.

That the Supreme Court erred in affirming the action of the trial court in adjudging defendant guilty and sentencing him for violation of Section 6253, Revised Laws of Hawaii, 1935, as amended by Act 88, Session Laws of 1941, for the reason that said law is void for uncertainty and indefiniteness;

III.

That in the trial court, the defendant was put to trial upon the following charge:

“That Koa Gora at Honolulu, City and County of Honolulu, Territory of Hawaii, on the 6th day of July, A. D. 1943, did do that which was lewd and lascivious in conduct, contrary to Section 6253 of the Revised Laws of Hawaii 1935.”

That said charge wholly failed to state an offense against the laws of the Territory of Hawaii,

and was too vague, indefinite, uncertain and general to satisfy the requirements of the Constitution, particularly the Sixth Amendment thereof, and the Supreme Court erred in sustaining the action of the trial court in finding defendant guilty;

IV.

That said charge failed to set forth with reasonable particularity the offense which defendant was alleged to have committed, to enable defendant to prepare his defense, and to plead his conviction in a subsequent prosecution for the same offense, and the Supreme Court therefore erred in sustaining the action of the trial court in putting defendant to trial thereon and in finding him guilty.

Wherefore, plaintiff in error prays that the decision [8] and judgment of the Supreme Court may be reversed, and for such further relief as to the court may seem just and proper.

Dated: Honolulu, Hawaii, Oct. 25th, 1944.

KOA GORA,

By **FRED PATTERSON,**

E. J. BOTTS,

His Attorneys.

[Endorsed]: Filed Oct. 27, 1944. [9]

In the Supreme Court of the Territory
of Hawaii

TERRITORY OF HAWAII,

Defendant in Error,

vs.

KOA GORA,

Plaintiff in Error.

CLERK'S STATEMENT OF
DOCKET ENTRIES

1. Charged in District Court of Honolulu, City and County of Honolulu, Territory of Hawaii, on July 7, 1943, violation of Section 6253, Revised Laws of Hawaii 1935, as amended by Act 88, Session Laws of 1941, viz. Lewd and Lascivious Conduct, and Section 2630, Revised Laws of Hawaii 1935, viz. Sale of Intoxicating Liquor without a License.

2. Convicted in said District Court July 16, 1943, and appealed to Circuit Court, First Judicial Circuit.

3. Tried, jury waived, in Circuit Court August 10, 1943 on said two charges; found guilty on both.

4. Judgment and sentence in Circuit Court August 10, 1943; sentenced to six months in jail for Lewd and Lascivious Conduct (violation of Section 6253, Revised Laws of Hawaii 1935, as amended by Act 88, Session Laws of 1941), and on charge of Sale of Intoxicating Liquor without a License (violation of Section 2630, Revised Laws of Hawaii 1935), to pay a fine of \$200.00.

5. Exception to decesion and judgment of Circuit Court [11] filed and allowed August 19, 1943.

6. Application for writ of error from Supreme Court of the Territory of Hawaii to the Circuit Court of the First Judicial Circuit filed August 30, 1943.

7. Writ of error to said Circuit Court issued from Supreme Court August 30, 1943.

8. Decision of Supreme Court rendered September 14, 1944.

9. Judgment of Supreme Court entered October 24, 1944.

Dated: October 31, 1944.

GUS R. SPROAT,

Clerk, Supreme Court of the
Territory of Hawaii.

[Endorsed]: Filed Oct. 31, 1944. [12]

[Title of Supreme Court and Cause.]

ORDER

Good cause appearing therefor, it is hereby ordered that Plaintiff in Error may have up to and including December 1, 1944, within which time to prepare and file with the clerk of the Circuit Court, 9th Circuit, the record on appeal in the above entitled matter.

Dated: October 31, 1944.

[Seal]

LOUIS LE BARON

Justice, Supreme Court,
Territory of Hawaii.

[Endorsed]: Filed Oct. 31, 1944. [14]

[Title of Supreme Court and Cause.]

PRAECIPE

To the Clerk of the Supreme Court:

Please cause to be prepared and transmitted to the Clerk of the United States Circuit Court of Appeals for the Ninth Circuit, San Francisco, California, certified copies of the following:

1. Clerk's statement of docket entries.
2. Notice of appeal by Plaintiff in Error.
3. Assignment of Errors.
4. Decision of the Supreme Court.
5. Judgment of the Supreme Court.
6. Statement of evidence.
7. Clerk's minutes of the Circuit Court, First Circuit, re proceedings against Plaintiff in Error.
8. The charge or accusation on which Plaintiff in Error was tried before Circuit Court, First Circuit.

Dated: Nov. 1, 1944.

KOA GORA

By E. J. BOTTS,

FRED PATTERSON,

His Attorneys.

[Endorsed]: Filed Nov. 1, 1944. [16]

United States Circuit Court of Appeals
for the Ninth Circuit

TERRITORY OF HAWAII,

Appellee,

vs.

KOA GORA,

Appellant.

Upon Appeal from the Supreme Court of the Territory of Hawaii to the Circuit Court of Appeals for the Ninth Circuit

STATEMENT OF EVIDENCE

Be It Remembered that the above entitled cause came on regularly for trial before the Circuit Court of the First Judicial Circuit, Territory of Hawaii, on the 10th day of August, 1943, the Territory of Hawaii being represented by W. Z. Fairbanks, Esquire, and the defendant being present and represented by George Kobayashi, Esquire.

TERRITORY OF HAWAII—

APPELLEE'S CASE

Testimony of

ARTHUR A. NOTIKAI

The witness, Arthur A. Notikai, being duly sworn, testified as follows:

That he is a Shore Patrolman with the United States Navy, Second Class Shore Patrol Specialist,

(Testimony of Arthur A. Notikai.)

and prior to trial had been such for thirteen months in Honolulu; that the first time he knew Koa Gora was "on the day that this happened." The witness identified Koa Gora in the courtroom. He saw him at a rooming house on Kamamalu Street at about 10:30 A. M. on July 6 (1943). The witness was accompanied by Sgt. Shaner, who is with the Honolulu Police Department. On the way up, the witness received a \$10.00 bill from Sgt. Shaner, the serial numbers of which the sergeant made a note of. The [18] \$10.00 was to be used "to pay on a purchase of whiskey". The witness and Sgt. Shaner had gone there to make an investigation of the place, acting on some information they had received. When they arrived, the witness went in alone, Sgt. Shaner remaining outside. Asked what he saw on entering the place, the witness said:

A. I saw a lady that was there. There was no one at the front, on the lanai, so I walked over to the stairway that goes down to the second deck,—the second floor, underneath the main floor, you know.

Q. Yes.

A. The lady that was there, I asked where I could see the,—if I could see the proprietor, Mr. Gora. So he comes up the stairway. He comes out of the room. He comes up. He had on little short pants. He had a mop in his hand, a swab, as if he had been cleaning up. He comes up, and he goes on the lanai, the front lanai, and we sit down.

Q. You talked to him? A. Yes, sir.

Q. What was that conversation, as best you can recall it?

(Testimony of Arthur A. Notikai.)

A. I asked if I could get a room; and did he have any women.

Q. What did he tell you?

A. He said, he told me he didn't have any women, "We don't need any." He said, "I can take their place."

Q. That is what Gora said?

A. Yes. He asked me if I had an over-night pass. I said, "No. I could get by without. I won't have to have one." And he said, "Well", he said, "You can have a room here; you sleep with me."

[19]

Q. Did he say anything else?

A. No. He said, "Come over, and I will show you one of the rooms," and he takes me over to the left of the front entrance to a small building. This room it has got a shower, it has got a toilet. Well, we go in there, and I looks around the room. He goes into the shower, and he takes off his trousers, his little short pants, washes himself, and gets himself cleaned up, you know. And then he—all the time he wanted me to come in the shower and look at him.

Q. Did you go in and look at him?

A. No sir. I went to the door, but I didn't look at him. So I walked back. Then he comes out, and he dries himself off, and put his trousers on. He didn't button them all the way up, and he comes over and he unbuttons my britches, and takes hold of my penis. I pushed his hand off. I asked him, I told him that I needed a drink, and

(Testimony of Arthur A. Notikai.)

asked him if he had anything to drink. He said, "Yes, we can get something to drink. I will let you have a pint now." He understood I was coming back that afternoon about 2:00 o'clock. He said, "I will let you have a pint now, then we can get more when you get back. If I give you a quart, you will go off and get drunk, and you won't come back." I said, "O. K.," how much would be the pint, and he said "Ten dollars." I said, "All right, you go and get the pint, and I will give you ten dollars." He goes downstairs. He told me to wait for him in the room, and not to go outside. He goes downstairs. It takes him four or five minutes. I don't know exactly how long, or how many minutes, approximately four or five, and he comes back with the bottle. There is the bottle right there.

Q. It was a bottle similar to this that he gave you? A. Yes. [20]

The witness, shown a bottle, Exhibit "A", said it was similar to such a bottle. He said he gave Koa Gora the \$10.00 bill, the latter gave him the bottle. After examining the contents, he concluded it was whiskey; gave it to Sgt. Shaner, who arrested Koa Gora. Witness said Shaner asked Gora where the witness got that package and Koa Gora said, "I sold it to him." In response to Sgt. Shaner's demand, Koa Gora pulled the \$10.00 bill out of his pocket and gave it to the officer; it had the same serial numbers as the bill he had given to witness. The liquor was given to the police chemist for examination, and Koa Gora was charged.

(Testimony of Arthur A. Notikai.)

This happened in Honolulu, City and County of Honolulu, Territory of Hawaii. It was stipulated that defendant did not have a liquor license.

On cross-examination, the witness was asked his purpose in going to Koa Gora's place and he replied:

A. "It was a rooming house, and the Navy personnel,—we have a list of most of the rooming houses and hotels in Honolulu. Some are bona fide, and sailors can stay there over night, and some are not. That place is not. We want to see if we could put it on the bona fide list, or keep it off the bona fide list. We check all these places, and see how they are run. That was my purpose up there, to see how the place was run, or have that on the list."

Q. "Why did you call in Sergeant Shaner, why did you have him with you?"

He said that they had complaints about the place; a report had been made that Koa Gora had been selling whiskey and that "he had a pretty bad character as to his sex part." The witness said when he came to the place, a young lady came to the door. "his daughter-in-law, or sister-in-law, or something like that," [21] and the witness asked for Mr. Gora or the proprietor who was operating the place. Koa Gora then appeared, they sat down, and the witness asked for an apartment. Koa Gora said he had one in the main building. The witness said, "He said, 'Come on, let me show you one of my apartments.'" The witness said that defendant wanted "to take a shower, you know, get me back

(Testimony of Arthur A. Notikai.)

in the room with him, to see what he could do with me". He continued:

A. He said I could rent an apartment, but I didn't rent it.

Q. Then who did you say the apartment was for, you?

A. I didn't rent the apartment.

Q. Well,—

A. I asked him if I could. I didn't tell him I wanted to. I asked if I could. I said, "I don't have an over night pass." He said that was all right. He was supposed to take my pass. I was supposed to have one. It is his business to check it.

Q. What was this about coming back at 2:00 o'clock?

A. He wanted me to come back at 2:00 o'clock. Then that night he said, "You can sign the register here." That is what you are supposed to do. That is what you are supposed to do, you are supposed to sign the register. I didn't sign no register. I didn't rent no room. But he said, "Come back at 2:00 o'clock." He was going somewhere, and he said he would be back. He said, "Bring a couple of your buddies." He thought I had two buddies down town that was waiting for me.

Q. He thought? A. I told him that.

Q. You told him that. You told him that you had a couple of buddies that you wanted to rent an apartment? [22]

A. Yes. I said that they were waiting for me. He said, "You go back and get them, and bring

(Testimony of Arthur A. Notikai.)

them back with you." He said that they would have to register in the room. "You register them and they can stay in the room with you." That is not supposed to be done.

Q. You didn't tell him that you wanted to rent a room for these two buddies, and he told you you could come back in the afternoon?

A. No. He didn't tell me that at all.

Q. Now, this bottle that he is supposed to have brought out, what condition was it in? Was it wrapped up, or cold, or warm?

A. It was cold.

Q. You asked him for a drink, didn't you?

A. Yes. I asked if I could buy a drink. I said I didn't care what it is, anything to drink, whiskey, rum, Scotch, or anything.

Testimony of Frank Shaner on behalf of the prosecution.

FRANK SHANER,

having been duly sworn, testified as follows:

That he is a sergeant of the Honolulu Police Department, connected with the Vice Division; that he had been with the police department for about two years. He knew Koa Gora as being implicated in this case and recognized him in court. Asked if he went to Koa Gora's place on July 6, he said he did, and was accompanied by Shore

(Testimony of Frank Shaner.)

Patrolman Notikai. Asked how he happened to go there, he said they had had numerous complaints from neighbors and soldiers themselves, and sailors. He said he went there in his car; he [23] had an arrangement to go with the Shore Patrol as an investigator; the witness going in his capacity as a member of the Vice Division. On the way up, he gave the Shore Patrol officer a \$10.00 bill; he took the serial number which was L-69069269A. He gave Notikai the \$10.00, and the latter left the car. The witness parked his car near 1712 Kamamalu Street. Notikai went by himself into the house to investigate; the witness stayed out. Said the witness: "And I walked down across the street, and stood across the street waited for him to come out." The witness was in civilian clothes. In half an hour Notikai came out. The latter had entered the place with nothing in his hands but came out with a bottle in a paper bag. The witness then went in to the place from which Notikai had just come and placed Koa Gora under arrest for investigation. He said he asked Koa Gora about the liquor, and Koa Gora said he sold it to Notikai for \$10.00. When he was asked where the money was, he said, "It is right here." He reached in his right front pocket and gave the witness a \$10.00 bill which had the same serial number as the one the witness had given Notikai. The witness was asked:

Q. Then what did you do?

A. Well, when they came out, or when he came out he also mentioned the fact, he pointed to his britches, they were unbuttoned, he said, "There

(Testimony of Frank Shaner.)

isn't only liquor being sold here, the man is a little queer, a little on the queer side." That is the way he put it, "He grabbed for my penis as I was in there talking to him." I noticed his britches were still unbuttoned.

Q. Did the defendant say anything about it?

A. He denied it up and down.

Q. He denied it? [24] A. Yes.

Q. He didn't deny selling liquor?

A. No. He didn't deny that. He denied the other.

Asked what he did with the liquor, he said he took it to the police station, had it tested by the police chemist; that the witness tasted it and, in his opinion, it was intoxicating liquor fit for beverage purposes.

On cross-examination, the witness said he didn't see the defendant sell the liquor, nor did he see Koa Gora give it to Notikai. He said that when the defendant was arrested, defendant "was in the top floor, on the left. I think it is a converted garage; they converted a garage into a bunk house, more or less, there is six to nine bunks; formerly used as a garage." Asked if it could be possible that Koa Gora might have been chasing Notikai, he said that he didn't think he was. Asked if he searched the rooming house, the witness said he did, and found another quart bottle but there was nothing in it. Also, there were several other empty bottles there but didn't find any liquor in any of them. He didn't take a statement from the defendant when he took

(Testimony of Frank Shaner.)

him to the police station. The witness repeated that Koa Gora admitted he had sold the liquor at the bunk house, and made the admission in the presence of Notikai who was standing there. He was asked if, when he and Notikai went to Gora's place, they had a pre-arranged plan whereby he was to get \$10.00, and answered:

A. The plan was,—we expected anything from that house from the reports we had gotten. We just had complaints that sailors had been drunk there, so consequently I gave him the money to see if there was a bottle of liquor to be sold there. If it was being sold illegally, he was going on his own special duties from his department. So was I. [25]

Q. For all you know Notikai could have rented a place and paid that money down as a down payment on the apartment? You never seen him pass the money over to the defendant here?

A. I didn't see the transaction.

Testimony of Joseph R. Mottl on behalf of the prosecution.

JOSEPH R. MOTTL,

having been duly sworn, testified as follows:

That he was a police chemist; that he had examined and tested the bottle of liquor which Sgt. Shaner brought in and found that it contained 44.2 per cent ethel alcohol by volume, which corresponds to approximately the alcohol content of whiskey.

It was stipulated that witness Joseph R. Mottl was a qualified expert chemist.

APPELLANT'S CASE

Testimony of Koa Gora in his own behalf.

The defendant,

KOA GORA,

having been duly sworn, testified as follows:

That he is in the business of renting apartments and cottages at 1712 Kamamalu Street; that on July 6, 1943, at about 10:30 A. M., a sailor entered his place, came downstairs where he was in the kitchen. The sailor was identified as prosecution's first witness. Asked what happened, he said:

A. He came downstairs and asked me if I have an apartment there to rent. So, I say "Yes. You see the apartment. I got apartment empty here now. They are for rent." He said, "Yes, I seen it already." Then he said, "How much do you get for it?" I said, "\$27.50 for one couple. Shore patrol live there now, I rent a little bit more." [26]

Q. Did you ever see this man before?

A. Yes. I seen him around Hotel Street on shore patrol out there, making rounds, I am all over town the last ten years, I sell flowers.

Q. You have seen him around before?

A. He spoke to me quite often.

Q. Do you know whether he was shore patrol-man?

(Testimony of Koa Gora.)

A. I know he was a shore patrolman.

Q. Tell the court what happened.

A. He said, how much I get for the apartment. I told him it would be \$10.00 a week. He said he pay \$40.00 a month. I said, "If you want to give me \$10.00 per week, pay me in advance."

Q. Did he tell you who he wanted the apartment for?

A. He said that he wanted the apartment for three boys, "three of us boys." I said, "It will be \$10.00 for one or two, \$10.00 a week furnished."

The witness said that the sailor was all alone; that he never asked anything about girls; that the conversation took place by the parlor downstairs; that the witness never went into an apartment with him. Asked what happened, the witness said:

A. Then he give me \$10.00. He said, "I will give you \$10.00 for the apartment and come back this afternoon with three more boys when they are off duty." I want to show the apartments, one of the apartments, so I said, "You sign your name in the register, then I will give you a receipt." He said, "No, I am thirsty, wait, I want to have a drink." I said, "Go to the ice box and you can have all the drink you want. You can drink all what you want." And he said, "You have whiskey?" I said, "I am only allowed one quart a week."

Q. That is one quart that you buy?

A. That is what I bought from the store. He said, "Have one, too." I said, "No. I can't

(Testimony of Koa Gora.)

drink," this is the bottle I have for three weeks, when I make work in the victory garden. [27] That is only what I have left. I am sick. He said, "Only one drink." I said, "Have one drink." "This is one drink, no more." And he grabbed the bottle and walk away. He walked away, and then I started coming upstairs. Then I take the mop there and the bucket, I just go out to step into the apartment to clean up the apartment, because he said he was coming up there for the apartment, see, and I am trying to clean it up because I expected three men to come in that day in the afternoon.

Q. Did he ever sign the register?

A. No, he said, "Wait, I must have a drink now, I am thirsty, quick, quick." I said, "Come on quick to the ice box, and you can have all the drink you want."

Q. Does that happen before where you rented an apartment for a person not having signed the register; did they say that they would be back later on?

A. No. At the time he give me the money in my hand, I said, "Give me \$10.00. You sign the book." He said, "Here, take that money." I said, "O.K." "I am thirsty, I sign your book. Wait, Wait, I want a drink. I am thirsty." "O.K. you can drink, then sign the book." And he spoke to me about the liquor, he wanted to have one drink, no more. He grabbed hold of the bottle and he walked out quickly. I said, "You are being smart, you are being too smart." He walked away. It doesn't pay to fight for that.

(Testimony of Koa Gora.)

Q. Then what happened?

A. I was going upstairs to clean up the room, fix up the room, that apartment upstairs, "D" apartment there, that is the one.

Q. What was that renting for?

A. \$10.00 a week, or \$40.00 a month, payable in advance. I just happen to go just inside that apartment, and then Shaner came in, this man here. [28]

Q. That officer?

A. He come in. And he said, "You are under arrest." I said, "For what ground?" He said, "You have sold this whiskey. This pint of whiskey." I said, "I never sold." I said, "No."

Q. Did you admit to Sgt. Shaner that you sold that whiskey?

A. No. Never admit. He give me \$10.00 for the apartment. I told him to sign for the book. He said he was thirsty, and he want to drink. He went to the ice box, and all of a sudden he ran out quickly with the bottle.

Q. Did you admit at any time to either Sgt. Shaner, or any officer?

A. No. Never admitted that I had sold any bottle to anyone.

Q. Had you been in trouble before with any liquor?

A. Never was in trouble before. That was the first time it happened.

Q. Never had any occasion to have any investigation of you, or anything of that sort?

A. Never. That was the first time.

(Testimony of Koa Gora.)

On cross-examination, he restated that he didn't sell the liquor; denied that he told Sgt. Shaner he sold the liquor. Asked how long the sailor had been in his place, he said just a few minutes, less than five minutes; that the sailor had a conversation first with Mrs. Phillips while the witness was working in the kitchen washing dishes. The witness came out of the kitchen and a conversation occurred between him and Notikai in the parlor. He did not show Notikai an apartment; it wasn't necessary to show him any apartment because the doors were open and signs over them indicated the ones which were for rent. The witness said that Notikai paid the money for the apartment, saying [29] that he had already seen it from where he was standing; witness also denied taking a shower. Asked where he was when Sgt. Shaner arrested him, he said he "walked upstairs, from the step going up to the garage" with a bucket and mop, and when the officer entered and said, "You are under arrest," the witness asked, "What ground?" The officer said, "Well, you have sold one bottle to a service man." I said, "No. I never sold it. That is your story. Not me." I said, "I never sold it." "Well," he said, "Where is the ten dollar bill?" I said "Here is the ten dollar bill. He gave me the ten dollar bill for the apartment. He promised to take that apartment for ten dollars a week. There was two others, see?"

Asked if he knew the sailor before this, he said he did; that he, the witness, had sold flowers for the past ten years and had seen him on patrol;

(Testimony of Koa Gora.)

that he had known him "from since this year . . . I sell flowers nearly every day in the street, I seen him from the Black Cat Cafe." His best recollection was that he had seen him for about eight months or so; he was on patrol duty.

Testimony of Ellen Phillips in behalf of defendant.

ELLEN PHILLIPS,

having been duly sworn, testified as follows:

That on July 6, 1943, she was staying with her uncle at 1712 Kamamalu Street. On that day at about 10:30, a sailor came to the door and asked for Mr. Gora. The witness said, "And I called Mr. Gora. Mr. Gora told me to tell him what he wanted. He said, 'I wanted to rent a room.' I told Mr. Gora and he came in and talked in the parlor for a while." The parlor was downstairs next to the kitchen. While they were talking, the witness went to her bedroom. She could only hear a word or two of what [30] they said, but she heard them going into the kitchen but didn't know what they were doing. She heard mentioned "water, or something." They left the kitchen and stayed in the parlor. She didn't know what happened after that.

On cross-examination, she said that the defendant was her blood uncle; that she didn't work for him but visits there; that she had not discussed the case with Koa Gora. She said that the sailor, when he came in, asked for her uncle and she asked him

(Testimony of Ellen Phillips.)

what he wanted. He said he wanted a room. Then her uncle came up and they talked.

Q. Did your uncle go back and wash some dishes then first?

A. Yes. He went back in the kitchen and washed dishes.

While this was going on, the sailor was sitting in the parlor and the witness went back into her bedroom. It took her uncle about fifteen minutes to wash the dishes, "or less." Her bedroom door was "just half closed." She didn't know what the men did after she went into the bedroom.

On re-direct examination, she identified the sailor as Notikai.

ARTHUR A. NOTIKAI,

recalled as a witness for the prosecution, having been previously sworn, testified that he had been with the Shore Patrol for about thirteen months. The first week, he walked the beat from Bethel Street to River Street, "in Waikiki." Since then, he had not been on the beat; driven a truck, an ambulance and a delivery truck. Asked if he stayed in one place all the time he was at Koa Gora's place on the day in question, he said, "We stayed on the lanai a bit, then he takes me over into this room or apartment. We stayed in there most of the time." Witness said that when Koa Gora went for the liquor, the defendant told him to stay in the apartment; the witness was not in the kitchen and didn't go to the icebox and get

(Testimony of Arthur A. Notikai.)

the liquor; that he [31] bought the liquor and paid \$10.00; that he didn't pay \$10.00 down on the room, but the \$10.00 was for the liquor; that Koa Gora handed him the whiskey and he gave him the money.

FRANK SHANER,

recalled as a witness for the prosecution, having been previously sworn, testified:

Asked how long he had known Notikai, he said that he worked with him off and on on cases with the Navy about five months. He said that Notikai is an ambulance driver and drives the Shore Patrol wagon around; that he is not a beat man; that he had worked on similar cases with the witness. Asked if, when he arrested the defendant, he asked him if he sold liquor or not, he replied, "I asked him where the sailor had gotten the liquor and he said 'I sold it to him.' " The witness announced himself as an officer and told the defendant he was under arrest for investigation; that when he told him this, Koa Gora didn't deny selling the liquor.

KOA GORA,

recalled as a witness in his own behalf, having been previously sworn, testified as follows:

Asked how he recognized Notikai, the latter having claimed he had never been around the Black Cat Cafe, the witness said that he had seen him around

(Testimony of Koa Gora.)

the Black Cat when he was on duty. "He drives a truck, sometimes, and he walks down Hotel Street. Sometimes I seen him on Bethel Street on my rounds around down there, because I go all around selling flowers." The witness said that he remembered Notikai; that they had spoken to each other. He said that he gave out cards to service men who were looking for apartments, and that he had given one to Notikai. "He said that he wanted an apartment for his boy friends." He added, "That is [32] why he come up to my place, I thought he was looking for an apartment." The witness said that when Notikai came to his place, he said he was looking for an apartment and that he understood from some of the boys that the witness had an apartment for rent; the witness was sure that he had given a card to Notikai.

ARTHUR A. NOTIKAI,

recalled as a witness for the prosecution, having been previously sworn, testified:

The witness denied that Koa Gora had ever given him a card; that he had never seen him before the case or before entering his place on the morning in question.

The above and foregoing is all the evidence necessary for consideration by the United States Circuit Court of Appeals for the Ninth Circuit on ap-

peal in the above entitled matter. The portions of the testimony above set out verbatim are necessary to a proper determination of said appeal.

Wherefore, Koa Gora, plaintiff in error, prays that the above statement of evidence be settled, approved and allowed by the above entitled court as a true, full and correct statement of all the evidence taken and given on the trial of said cause, for use on said appeal in the United States Circuit Court of Appeals for the Ninth Circuit. Plaintiff in error further prays that the above entitled court direct that the verbatim testimony contained in the foregoing statement of evidence shall be reproduced in the exact words of the witness as in said foregoing statement of evidence.

Dated: Honolulu, Hawaii, this 30th day of October, 1944. [33]

E. J. BOTTS

Attorney for Plaintiff in
Error.

City and County of Honolulu,
Territory of Hawaii—ss.

E. J. Botts, being first duly sworn, on oath, deposes and says: That he is counsel for plaintiff in error above named; that he has read the foregoing Statement of Evidence and that the same is true, complete and properly prepared and that the reproduction of the portions of the testimony therein set forth verbatim is necessary for a proper determination of said cause on appeal.

E. J. BOTTS

Subscribed and sworn to before me this 30th day of October, A. D. 1944.

[Seal] EDWARD W. L. KAM

Notary Public, First Judicial Circuit, Territory of Hawaii.

My commission expires Oct. 6, 1947.

On the 10 day of November, A. D. 1944, the foregoing narrative statement of the evidence having been presented to me, and respective counsel having been heard in the premises, the same is hereby allowed and approved and declared and certified to be true, complete and properly prepared, and the same is ordered filed as a "Statement of the Evidence" to be included in the record on appeal in the above entitled cause, and a verbatim reproduction of the portions of the evidence included in the foregoing statement being necessary to a proper determination of said cause on appeal, It Is Further Ordered that the testimony hereinabove set forth verbatim shall be so [34] reproduced in making up said record on appeal, all as provided by paragraph b of Equity Rule 75.

Dated: Honolulu, Hawaii, November 10, 1944.

LOUIS LE BARON

Justice, Supreme Court of the
Territory of Hawaii.

It Is Hereby Stipulated that the above and foregoing Statement of Evidence is true and correct, and that the reproduction of the portions of the testimony therein set forth verbatim is necessary

for a proper determination of said cause on appeal, and the same may be forthwith approved by the Judge.

E. J. BOTTS and
FRED PATTERSON,
Attorneys for Plaintiff in
Error.

By E. J. BOTTS
W. Z. FAIRBANKS
Prosecutor, City and County of Honolulu, Terri-
tory of Hawaii.

Attorney for Defendant in
Error.

[Endorsed]: Filed Nov. 10, 1944. [35]

In the Supreme Court of the Territory of Hawaii,
October Term, 1943.

TERRITORY OF HAWAII v. KOA GORA.

Nos. 2547 and 2548.

Error To Circuit Court First Circuit,
Hon. A. M. Cristy, Judge.

Submitted August 25, 1944.

Decided September 14, 1944.

Kemp, C. J., Peters and Le Baron, JJ.

Criminal Law—statutory construction—Revised
Laws of Hawaii 1935, section 6253—legislative in-
tent—common law.

Where the words "lascivious conduct" are
unqualifiedly employed to describe the statutory

offense and have a well-defined meaning without a special sense at common law, there is no need or reason to draw on the common law to determine legislative intent.

Same—charge and proof of lascivious conduct—same—offense against laws of Territory—unessential elements.

Elements essential to misdemeanor of lascivious conduct created by statute as offense against laws of Territory do not include a public performance toward a person of the opposite sex and hence such performance need not be charged to confer jurisdiction or proved to establish guilt. [37]

OPINION OF THE COURT BY LE BARON, J.

The defendant in the circuit court on appeal from the district court was tried, jury waived, and found guilty of two offenses: lascivious conduct and selling intoxicating liquor without a license. The cases were consolidated for trial and the instant writs are combined for appellate review.

The assignments of error upon which the defendant relies attack the sufficiency of the charges made in the circuit court by alleging that neither charge informed the defendant with adequate particularity of the “nature and cause of the accusation” as required by the Sixth Amendment of the Constitution, thereby failing to safeguard him against being “twice put in jeopardy” as provided by the Fifth Amendment; further, that neither stated “an offense against the laws of the Territory.”

At the outset it must be noted that the defendant did not include or describe the assailed charges in his assignments and that the record does not disclose them. Hence his assignments, dealing exclusively with their form and substance, are incomplete and present no precise point of law. However, any failure to qualify as an assignment of error within the meaning of Revised Laws of Hawaii 1935, section 3557 (see *Zen v. Koon Chan*, 27 Haw. 369; *Territory v. Yoon*, 36 Haw. 550), is not raised by the Territory. Its theory as well as that of the defendant is that charges were read in the circuit court from the district magistrate's notice and certificate of appeal. Consequently, while not condoning the loose practice suggested thereby, this court in the absence of anything to the contrary adopts the theory of counsel that such occurred, rather than sua sponte refuse to consider the assignments upon the theory [38] that other charges from newly entered informations were made in accordance with the better practice. The charges, thus taken to be the subject of the assignments, read as follows: (1) "That Koa Gora, at Honolulu, City and County of Honolulu, Territory of Hawaii, on the 6th day of July, A. D. 1943, did do that which was lewd and lascivious in conduct, contrary to Section 6253 of the Revised Laws of Hawaii, 1935," and (2) "That Koa Gora, at Honolulu, City and County of Honolulu, Territory of Hawaii, on the 6th day of July, A. D. 1943, did wilfully and unlawfully sell one pint bottle of intoxicating liquor without first having obtained a license so to do, and did then and there

and thereby violate the provisions of Section 2630 of Chapter 82 of the Revised Laws of Hawaii, 1935."

Regarding the first charge, the defendant claims that the statutory prohibition against "lascivious conduct" invokes the offense as it was known to the common law, the conception of which he maintains limited the offense to a public demonstration toward a person of the opposite sex. Upon such a premise the defendant assigns as error the trial judge's finding of guilt in that the charge by not setting out these limitations either omitted essential elements of the offense charged or did not state an offense against the laws of the Territory, and further, granting the charge to be sufficient, the evidence did not prove an offense in that the proof was directed toward acts which involved a person of his own sex and were not committed in a public place. In short, the defendant attempts to posit the efficacy of his contention upon the familiar rule that where one of our statutes (there being no common-law crimes in this jurisdiction) provides punishment for an act which would be a crime at common law and describes that act in general terms, [39] resort may be had to the common law to ascertain the meaning of the statute. (See *Territory v. Scully*, 22 Haw. 618.)

At common law the offense of lascivious conduct was that of a common nuisance where "all scandalous and open breaches of morality exhibited in the face of the people" were indictable. (1 East's Pl. Cr., c. 1 § 1, p. 3; see *Sedley's case*, 1 Sid. 168; conf.,

R. v. Crunden, 2 Camp. 89, Hawkins' Pl. Cr., Curwood's ed. bk. 1, c. 26, p. 358.) So at common law in order to charge and establish the offense it was necessary to show an affront against the decency and morality of the public rather than an injury to but one person. This was accomplished by pleading and proving a behavior committed in an open and public place in the presence of divers persons. (See *Regina v. Watson*, 2 Cox's Cr. L. Cas. 376; *Regina v. Webb*, 1 Den. 338 [169 Eng. Rep. R. 271]; *Commonwealth v. Wardell*, 128 Mass. 52.)

In contradistinction, section 6253 of the Revised Laws of Hawaii 1935 (Penal Code 1850, c. XIII, § 6), contains no import whatsoever of a publicly committed crime and none of the requirements of the charge at common law. It simply makes punishable "Any man or woman who is guilty of lewd conversation, lascivious conduct, or libidinous solicitations," without regard to whether such was committed in public or in private. On the other hand, in the same code as that in which section 6253, *supra*, was originally enacted, the legislature also for the first time enacted a statute which defined the offense of common nuisance by a concept comparable to that of the common law. It expressly gave "open lewdness or lascivious behavior, or indecent exposure" as examples and provided a more severe penalty for "whoever is guilty" of that offense [40] than it did for the other, which has been maintained to the present day. (See Penal Code 1850, c. XXXVII, §§ 1, 10; now R. L. H. 1935, §§ 5700, 5709.) Thus the legislature prescribes one punish-

ment for unqualified lascivious conduct and another and greater punishment for an open lascivious behavior offensive to the public. In brief, the statutes deal with cognate subjects. They are not inconsistent or in conflict but attain different prohibitory objectives, the *malum prohibitum* of one being the bare conduct of lasciviousness and the other an injury to the public itself as the gravamen of open lasciviousness.

Such comparison is not only illustrative of the apparent certainty of purpose of the statute under consideration, but is also an intrinsic aid in determining the true legislative intent, the gist of the defendant's contention being that the legislature intended to create and prohibit the same offense and behavior twice in the same code. Such a construction not only would tend to violate the doctrine of *pari materia* but would make the enactment of section 6253, *supra*, an empty gesture contrary to its spirit and reason. A rational interpretation in considering the effect of these penal statutes would be that their legislative purpose was to remedy effectively certain evils, existing or anticipated, by creating two distinct offenses within a uniform system of law.

The specific language of section 6253, *supra*, constitutes, however, the primary source from which its legislative intent and meaning must be ascertained to establish the law of that particular statute. In this connection the defendant argues that the words "lascivious conduct," descriptive of the offense,

amount to a general term within the rule [41] of statutory construction. Such an argument is basically unsound for the reason that the designated words are not of doubtful significance, nor are they ambiguous, uncertain, indefinite, technical, or words of art having a special sense at common law. On the contrary, whenever and wherever used together as an expression they have a constant and universally accepted meaning, reflected by definition in dictionaries of the English language from the time of the common law to the present day and connoting a behavior that is wanton, lewd, or lustful, and acts tending to produce lustful emotions. Thus were employed words which by their well-defined meaning together with the unqualified and plain language of the statute are expressive of a legislative intent to create an offense complete in itself and coextensive with the common parlance of the very words describing it, the language neither containing hidden ambiguities nor producing manifest injustice or absurdity. Nevertheless, in view of the defendant's argument, it is proper to point out that these words and the descriptives of their definition do not specify or even infer, or for that matter have never specified or inferred as far as we can ascertain, that to constitute the prohibited conduct it must be performed in public or directed toward a person of the opposite sex.

In view of the foregoing the construction urged by the defendant is clearly an improper and strained one. It cannot logically be sustained nor is there any need to draw on the common law to determine

legislative intent. Indeed to do so would be of no avail, the unmodified words which [42] the defendant questions having no meaning peculiar to the common law. The limitations, therefore, relating to an offense at common law and sounding in common nuisance (the concept of which is utterly foreign to that of section 6253, *supra*) have no place whatsoever in the understanding of the statute nor are they essential elements of the offense created by it. Hence they need not be pleaded to confer jurisdiction or proved to establish guilt.

As to the charge under section 2630 of the Revised Laws of Hawaii 1935, the defendant, although asserting an alleged failure to state an offense against the laws of the Territory, does not argue this jurisdictional point or cite authorities to support it. For this reason he is deemed to have abandoned it. Nevertheless, we have examined the record and do not find it well-raised. Suffice it to say that the charge, although meagre in its language, was sufficient to confer jurisdiction of an offense in all its essential elements against the laws of the Territory, it clearly accusing the defendant of having committed the misdemeanor of selling intoxicating liquor without a license, contrary to the statutory provisions of chapter 82, section 2630, *supra*.

Finding, as this court does, that both charges sufficiently set forth elements essential to the offenses charged in substantial conformity with the statutes and clearly state [43] offenses against the laws of the Territory, it is of the opinion that no error of

defect injuriously affecting the defendant's substantial rights is present in either charge within the purview of Revised Laws, of Hawaii 1935, section 3563. Further, assuming arguendo that the defendant was entitled to more particularity, that right is deemed to have been waived and therefore he cannot be heard, after plea and conviction upon substantial evidence of guilt, to assert it for the first time on appeal, the record conclusively showing that the defendant not only took no advantage of any statutory procedure provided for his benefit but also proceeded through the entire period of trial without objecting to the charges in the lower court or calling their alleged insufficiencies in any way to the attention of the trial judge or prosecuting attorney.

The assignments of error therefore are overruled, the writs denied and the judgments below sustained.

S. B. KEMP /s/

E. C. PETERS /s/

LOUIS LE BARON /s/

E. J. BOTTS and

F. PATTERSON

for plaintiff in error.

W. Z. FAIRBANKS,

Public Prosecutor,

and

J. E. PARKS.

Assistant Public Prosecutor
for the Territory.

[Endorsed]: Filed Sept. 14, 1944. [44]

In the Supreme Court of the Territory of Hawaii,
October Term, 1944

Nos. 2547 and 2548

TERRITORY OF HAWAII,

Defendant in Error,

v.

KOA GORA,

Plaintiff in Error.

Error to Circuit Court, First Circuit, Hon. A. M.
Cristy, Judge.

JUDGMENT ON WRIT OR ERROR

In the above entitled causes, pursuant to the opinion of the above-entitled court rendered and filed on September 14, 1944, the assignments of error are overruled, the writs denied and the judgments below sustained.

Dated: Honolulu, T. H., October 24, 1944.

By the Court:

[Seal] /s/ GUS K. SPROAT

Clerk. [46]

Friday, July 30, 1943

At Term—2:00 o'clock p.m.

Present: Hon. A. M. Cristy, Second Judge, Presiding.

L. R. Holt, Clerk.

S. H. Minns, Reporter.

C-16921

Lewd and Lascivious Conduct

TERRITORY OF HAWAII

vs.

KOA GORA,

Defendant.

ARRAIGNMENT AND PLEA

Counsel:

Wm. Z. Fairbanks, Esq.,

Assistant Public Prosecutor, for the Territory.

Geo. Kobayashi, Esq.,

Attorney for Defendant.

Defendant in person.

Defendant was called to the bar and in his own proper person pleaded Not Guilty to the charge, which plea was duly noted and entered. This being an appeal—Jury Waived—the case was placed on the Ready Calendar for trial.

By the Court:

/s/ L. R. HOLT

Clerk.

At Term: Tuesday, August 10, 1943, 9:00 A.M.

Present: Hon. A. M. Christy, Second Judge Presiding

S. H. Minns, Reporter

Chas. L. Hutchison, Clerk

[Title of Cause.]

16921

Lewd and Lascivious Conduct

TRIAL—JURY WIAVED

Counsel:

W. Z. Fairbanks, Esq.,

Deputy Prosecutor

G. Kobayashi, Esq.,

For Defendant

Counsels stipulated that this case C-16921 and C-16922 be consolidated and tried together, also that the defendant has no license to sell liquor.

The following persons were called, sworn and testified: [47]

Arthur O. Notikai: Shore Patrol, Specialist 2d. Class, U. S. Navy.

9:01 Direct by Mr. Fairbanks. The witness was shown a bottle with liquid in it, a tag attached to the bottle and also a yellow colored paper around it and identified the same. The Court allowed it to be identified as Exhibit "A" by the yellow paper around the bottle.

9:10 Cross by Mr. Kobayashi.

Frank Shaner: Sgt. of Police, Honolulu Police Dept.

9:17 Direct by Mr. Fairbanks.

9:25 Cross by Mr. Kobayashi.

Joseph R. Mottl: Chemist, Honolulu Police Dept.

Counsels stipulated the qualifications of the witness.

9:27 Direct by Mr. Fairbanks.

9:28 Cross by Mr. Kobayashi.

9:29 Re-direct by Mr. Fairbanks. Upon motion by counsel the Court received the following and ordered same marked:

Prosecution's Exhibit "A" in Evidence: Bottle 4/5 full of liquor, 1 pint size with report of police chemist on yellow paper around bottle and tag attached to same.

DEFENDANT'S CASE

The following were called and duly sworn:

Koa Gora: Defendant.

9:30 Direct by Mr. Kobayashi.

9:35 Cross by Mr. Fairbanks.

Mrs. Allen Phillips: Niece of defendant.

9:41 Direct by Mr. Kobayashi.

9:43 Cross by Mr. Fairbanks.

9:44 Re-direct.

REBUTTAL

Arthur O. Notikai: Recalled.

9:45 Direct by Mr. Fairbanks.

9:47 Cross by Mr. Kobayashi.

Frank Shaner: Recalled.

9:49 Direct by Mr. Fairbanks.

9:50 Cross by Mr. Kobayashi.

9:51 Re-direct.

Koa Gora: Recalled.

9:51 Direct by Mr. Kobayashi.

9:54 Cross by Mr. Fairbanks.

Arthur O. Notikai:

9:54 Direct by Mr. Fairbanks.

The Court after hearing the evidence, finds the defendant guilty as charged and repeats the sentence given the defendant in the District Court of Honolulu. [48]

In Criminal No. 16921 the defendant is fined Two Hundred Fifty Dollars (\$250.00), costs remitted and mittimus to issue Wednesday, August 11, 1943 at 12:00 noon.

By Order of the Court:

/s/ CHAS. L. HUTCHISON

Clerk

Wednesday, August 11, 1943

At Term—11:00 a.m.

MINUTE ORDER

At the request of Counsel Patterson, representing Defendant, the Court *staid* the mittimus for one week, until August 18th at 12:00 m.

By the Court:

/s/ DM. FEDER

Clerk.

Wednesday, August 18, 1943

At Term—10:30 a.m.

MINUTE ORDER

At the request of Counsel Botts, who with Counsel Patterson, represents Defendant, the Court *staid* the mittimus for another two weeks, until Sept. 1, 1943 at 12:00 m.

By the Court:

/s/ DM. FEDER

Clerk.

Friday, July 30, 1943

At Term—2:00 o'clock p.m.

Present: Hon. A. M. Cristy, Second Judge, Presiding.

L. R. Holt, Clerk.

S. H. Minns, Reporter.

[Title of Cause.]

16922

Unlawful Sale of Liquor. [49]

ARRAIGNMENT AND PLEA

Counsel:

Wm. Z. Fairbanks, Esq.,

Assistant Public Prosecutor, for the Ter-
ritory.

G. Kobayashi, Esq.,

Attorney for Defendant.

Defendant in person.

Defendant was called to the bar. Upon inquiry of the Court as to his plea, the defendant pleaded Not Guilty and waived jury. The case was placed on the Ready Calendar for trial.

By the Court:

/s/ L. R. HOLT

Clerk.

At Term: Tuesday, August 10, 1943, 9:00 A.M.

Present: Hon. A. M. Cristy, Second Judge Pre-
siding

S. H. Minns, Reporter

Chas L. Hutchison, Clerk

[Title of Cause.]

16922

Unlawful Sale of Liquor

Counsel:

W. Z. Fairbanks, Esq.,
Deputy Prosecutor

G. Kobayashi, Esq.,
For Defendant

TRIAL—JURY WAIVED

Counsels stipulated that this case C-16922 and C-16921 be consolidated and tried together, also that the defendant has no license to sell liquor.

The following persons were called, sworn and testified:

Arthur O. Notiaki: Shore Patrol, Specialist 2d. Class, U. S. Navy.

9:01 Direct by Mr. Fairbanks. The witness was shown a bottle with liquid in it, a tag attached to the bottle and also a yellow colored paper around it and identified the same. The Court allowed it to be identified as Exhibit "A" by the yellow paper around the bottle.

9:10 Cross by Mr. Kobayashi.

Frank Shaner: Sgt. of Police, Honolulu Police Dept.

9:17 Direct by Mr. Fairbanks.

9:25 Cross by Mr. Kobayashi.

Joseph R. Mottl: Chemist, Honolulu Police Dept.

Counsels stipulated the qualifications of the witness.

9:27 Direct by Mr. Fairbanks.

9:28 Cross by Mr. Kobayashi.

9:29 Re-direct by Mr. Fairbanks. Upon motion by counsel the Court received the following and ordered same marked: [50]

Prosecution's Exhibit "A" in Evidence: Bottle 4/5 full of liquor, 1 pint size with report of police chemist on yellow paper around bottle and tag attached to same.

DEFENDANT'S CASE

The following were called and duly sworn:

Koa Gora: Defendant.

9:30 Direct by Mr. Kobayashi.

9:35 Cross by Mr. Fairbanks.

Mrs. Allen Phillips: Niece of defendant.

9:41 Direct by Mr. Kobayashi.

9:43 Cross by Mr. Fairbanks.

9:44 Re-direct.

REBUTTAL

Arthur O. Notikai: Recalled.

9:45 Direct by Mr. Fairbanks.

9:47 Cross by Mr. Kobayashi.

Frank Shaner: Recalled.

9:49 Direct by Mr. Fairbanks.

9:50 Cross by Mr. Kobayashi.

9:51 Re-direct.

Koa Gora: Recalled.

9:51 Direct by Mr. Kobayashi.

9:54 Cross by Mr. Fairbanks.

Arthur O. Notikai:

9:54 Direct by Mr. Fairbanks.

The Court after hearing the evidence, finds the defendant guilty as charged and repeats the sentence given the defendant in the District Court of Honolulu. In Criminal No. 16921 the defendant is fined Two Hundred Fifty Dollars (\$250.00), costs remitted and mittimus to issue Wednesday, August 11, 1943 at 12:00 noon and in Criminal No. 16922 the defendant be imprisoned in the Honolulu Jail for six (6) months, costs remitted and mittimus to issue Wednesday, August 11, 1943 at 12:00 noon.

The Court recessed at 9:55 A. M.

By Order of the Court:

/s/ CHAS L. HUTCHISON

Clerk [51]

Wednesday, August 11, 1943

At Term—11:00 a.m.

MINUTE ORDER

At the request of Counsel Patterson, representing Defendant, the Court *staid* the mittimus for one week, until August 18th at 12:00 m.

By the Court:

/s/ DM. FEDER

Clerk.

Wednesday, August 18, 1943

At Term—10:30 a.m.

MINUTE ORDER

At the request of Counsel Botts, who with Counsel Patterson, represents Defendant, the Court *staid* the mittimus for another two weeks, until Sept. 1, 1943 at 12:00 m.

By the Court: .

/s/ D. M. FEDER

Clerk.

[Endorsed]: Filed Oct. 24, 1944. [52]

District Court of Honolulu, City and County of
Honolulu, Territory of Hawaii

C. 16922

TERRITORY OF HAWAII

v.

KOA GORA

NOTICE AND CERTIFICATE OF APPEAL

I Hereby Certify that on the 16th day of July, 1943 in the above entitled cause, I found the above named defendant guilty of violating the following charge, to wit:

That Koa Gora, at Honolulu, City and County of Honolulu, Territory of Hawaii, on the 6th day of July, A. D. 1943, did wilfully and un-

lawfully sell one pint bottle of intoxicating liquor without first having obtained a license so to do, and did then and there and thereby violate the provisions of Section 2630 of Chapter 82 of the Revised Laws of Hawaii, 1935, and sentenced him to pay a fine in the sum of \$250.00, costs of court remitted: that an appeal from said judgment was duly noted by the defendant above-named to the Circuit Court of the First Judicial Circuit of the Territory of Hawaii, jury trial waived and that said appeal has since been duly perfected.

A full and correct copy of my record in said case is hereto attached.

Given Under My Hand this 16th day of July
A. D. 1943.

/s/G. WIGHT

2d District Magistrate of Honolulu, City and
County of Honolulu, Territory of Hawaii

In the Circuit Court of the First Judicial
Circuit, Territory of Hawaii

No. 16922

[Title of Cause.]

Violation of Sec. 2630 RLH/35

(Unlawful sale of liquor)

X	Appeal	....	Complaint for
....	Jury Demanded	....	Warr. Arr. for
X	Jury Waived	....	Demurrer
....	Mitigation	....	Motion to Dismiss
....	Points of Law	....	Motion to Suppress
....	Comm. Grand Jury	....	Writs
....	Comm. Jury Trial	X	Exhibits:
	Demanded	....	Pros. #
O	Complaint	....	Def.
....	Penal Summons		
....	Warrant of Arr.		Plea
....	Subpoena	...	Guilty
....	Bench Warrant	✓	Not Guilty
....	Search Warrant	....	Nolo Contendre
....	Affidavit for		

	Decision				Sentence		
	Mo.	Day	Yr.		Yr.	Mo.	Day Costs
.... Acquitted				X Honolulu Jail			
X Convicted	7	16	'43	....Suspended			
X Sentenced	7	16	'43	....Dr. Lic. Susp.			
.... Dismissed				....Driver's license revoked			
X Appeal filed	7	16	'43	X Fine \$250.00		None	
X Appeal perf.	7	16	'43				
.... Cash Bail \$.....				....defendant in custody at Hon-			
X Bond \$100.00				olulu Jail			
X Bond No. 204				Date.....			
Bondsman:				....Bond filed at Circuit Court			
W. N. Rosehill				by Warden of Honolulu Jail			
				Date.....			

#Pros. exhibit A—1 pt. bottle intoxicating liquor, 4/5 full.

G. KOBAYASHI, Esq.,

Attorney for Defendant. [53]

[Endorsed]: Filed July 28, 1943. [54]

District Court of Honolulu, City and County of
Honolulu, Territory of Hawaii

C 16921

[Title of Cause.]

NOTICE AND CERTIFICATE OF APPEAL

I Hereby Certify that on the 16th day of July, 1943 in the above entitled cause, I found the above named defendant guilty of violating the following charge, to wit:

That Koa Gora, at Honolulu, City and County of Honolulu, Territory of Hawaii, on the 6th day of July, A.D., 1943, did do that which was lewd and lascivious in conduct, contrary to Section 6253 of the Revised Laws of Hawaii, 1935, and I sentenced him to imprisonment in Honolulu Jail for a period of 6 months (six). Costs of Court remitted.

that an appeal from said judgment was duly noted by the defendant above-named to the Circuit Court of the First Judicial Circuit of the Territory of Hawaii, jury trial waived and that said appeal has since been duly perfected.

A full and correct copy of my record in said case is hereto attached.

Given Under My Hand this 16th day of July, A. D. 1943.

/s/ G. WIGHT

2d District Magistrate of Honolulu, City and
County of Honolulu, Territory of Hawaii

In the Circuit Court of the First Judicial Circuit,
Territory of Hawaii

No. 16921

Violation of Section 6253 RL
(Lewd and Lascivious Conduct)

[Title of Cause.]

X Appeal	.... Complaint for
.... Jury Demanded	.... Warr. Arr. for
X Jury Waived	.... Demurrer
.... Mitigation	.... Motion to Dismiss
.... Points of Law	.... Motion to Suppress
.... Comm. Grand Jury	.... Writs
.... Comm. Jury Trial	.... Exhibits:
.... Demanded	.... Pros.
O Complaint	.... Def.
.... Penal Summons	
.... Warrant of Arr.	Plea
X Subpoena	.... Guilty
.... Bench Warrant	.... Not Guilty
.... Search Warrant	.... Nolo Contendre
.... Affidavit for	

	Decision			Sentence		
	Mo.	Day	Yr.		Yr.	Mo. Day Costs
.... Acquitted				X Honolulu Jail	6	None
X Convicted	7	16	'43	....Suspended		
X Sentenced	7	16	'43	....Dr. Lic. Susp.		
.... Dismissed				....Driver's license revoked		
X Appeal filed	7	16	'43	....Fine	\$.....	
X Appeal perf.	7	16	'43			
.... Cash Bail \$.....				.... defendant in custody at		
X Bond \$500.00				Honolulu Jail		
.... Bond No. 220				Date.....		
Bondsman:				.... Bond filed at Circuit Court		
W. N. Rosehill				by Warden of Honolulu		
				Jail		
				Date.....		

G. KOBAYASHI, Esq.,

Attorney for Defendant. [55]

[Endorsed]: Filed July 28, 1943. [56]

[Title of Supreme Court and Cause.]

CLERK'S CERTIFICATE

I, Gus K. Sproat, clerk of the supreme court of the Territory of Hawaii, do hereby certify that the foregoing documents are full, true and correct copies of the originals on file in the above entitled court and cause, as follows:

1. Opinion of the Court (referred to in praecipe as "Decision");
2. Judgment on Writ of Error;
3. Clerk's minutes in circuit court;
4. Notice and Certificate of Appeal from district court containing Charge asked for in praecipe, and made a part hereof.

I further certify that the following are the originals filed in said court and cause:

1. Notice of Appeal from supreme court;
2. Assignment of Errors;
3. Clerk's Statement of Docket Entries;
4. Order extending time to Dec. 1, 1944, to file record on appeal; [58]
5. Praecipe;
6. Statement of the Evidence.

I further certify that the cost of the foregoing transcript of record on appeal is \$25.60, and that the said amount has been paid by E. J. Botts, Esquire, one of the attorneys for plaintiff in error.

In Witness Whereof, I have hereunto set my hand and the seal of the supreme court of the Territory of Hawaii, at Honolulu, T. H., this 20th day of November, 1944.

[Seal]

GUS K. SPROAT

Clerk, Supreme Court, Terri-
tory of Hawaii [59]

[Endorsed]: No. 10940. United States Circuit Court of Appeals for the Ninth Circuit. Koa Gora, Appellant, vs. Territory of Hawaii, Appellee. Transcript of Record. Upon Appeal From the Supreme Court of the Territory of Hawaii.

Filed December 11, 1944.

PAUL P. O'BRIEN

Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit.

